

COMMISSION OF THE
EUROPEAN COMMUNITIES

*Guidelines for improving the synergy
between the public and private sectors
in the information market*

Directorate-General
for Telecommunications,
Information Industries and
Innovation

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This publication is also available in the following languages:

ES	ISBN	92-825-9233-2
DA	ISBN	92-825-9234-0
DE	ISBN	92-825-9235-9
GR	ISBN	92-825-9236-7
FR	ISBN	92-825-9238-3
IT	ISBN	92-825-9239-1
NL	ISBN	92-825-9240-5
PT	ISBN	92-825-9241-3

Cataloguing data can be found at the end of this publication



Information is considered more and more as a motor for the industrial development of the Community within a highly competitive world market. The setting up of an information services market as decided by Council on 26 July 1988¹ is a major aim in the Community's overall strategy.

It is recognized that a strong and healthy information market in the European Community can only be achieved through the work of a wide range of participants. As is recognized in the plan of priority actions for the setting up of an information services market the public sector has an important role to play, as a major product of basic data and information, as a provider of information goods and services and as a major consumer. According to the way it functions, it can either encourage or hinder initiatives leading to the development of a strong European information industry.

To promote optimal synergy between public sector support and private sector initiatives, the Commission undertook a series of consultations and discussions with representatives of the public and private sectors of the European information market in all Member States. As a result, the Commission has now produced 'Guidelines for improving the synergy between the public and private sectors in the information market', which have been endorsed by the representatives of the

Luxembourg: Office for Official Publications of the European Communities, 1989 ISBN

92-825-9237-5

Catalogue number: CD-54-88-126-EN-C

© EOSC-EEC-EAEC, Brussels 0 Luxembourg, 1989

Printed in the FR of Germany

INTRODUCTION

Member States meeting within the Senior Officials Advisory Committee (SOAC).

Guidelines are considered essential in order to help the public sector in decision-making related to making information available for external use and supporting the development of the information market; and to establish certain ground rules for avoiding possible unfair competition.

The guidelines, which are advisory only, are aimed at providing a basic set of generally agreed principles and recommendations which can be used in the development of national guidelines in individual Member States. They are in no sense directives, but it is hoped that they will, by virtue of their production at the Community level, support national initiatives designed to promote the growth of the European information industry.

C. JANSEN VAN ROSENDAAL

Governments and public sector bodies collect large amounts of data and information, as part of their routine functions, which could be made available to the private sector for the construction and marketing of electronic database services. The private sector is well placed to combine information from a variety of government sources, and its prime function is to produce and distribute information products oriented to the needs of the market. In order to develop and strengthen the information industry, a positive initiative is required from governments, to encourage the use and exploitation of public sector data and information. However, there are few convergent policies or guidelines within Member States relating to the role of the public sector in this area. In addition, if there are different policies operating in the different Member States, then it will be very difficult to develop the market. It is therefore desirable that national policies, as far as they exist, be coordinated at the Community level in order to allow the majority of the EC countries not yet having such a policy to follow these orientations on a national level.

In the following text, the guidelines are numbered, and explanatory material is printed in italic

GUIDELINES FOR IMPROVING THE SYNERGY BETWEEN THE PUBLIC AND PRIVATE SECTORS IN THE INFORMATION MARKET

THE PUBLIC SECTOR AS A PRODUCER OF BASIC DATA AND INFORMATION

Following the general principles used in the European System of Integrated Economic Accounts (ESA) (Sector 60, general government), the public sector includes central and local public administrations, which administer and finance a group of activities, principally of a non-market nature, intended for the benefit of the community, and institutions whose principal resources are derived from public funds. Organizations wholly or partly owned by the public sector and operating under the normal rules of the market are considered for the purpose of these guidelines as being in the private sector.

In the following guidelines, 'exploitation' may include some or all of the activities involved in the construction, manufacture and distribution of value-added information services. Electronic information services include all products and services originating from binary storage in a computer.

1. Public administrations regularly and systematically collect basic data and information in the performance of their governmental functions. These collections have value beyond their use by governments, and their wider availability would be beneficial both to the public sector and to private industry. Public organizations should, as far as is practicable and when access is not restricted for the protection of legitimate public or private interests, allow these basic information materials to be used by the private sector and exploited by the information industry through electronic information services.

Information to which access would be likely to be - restricted includes material relating to national security, external relations, the safety of the State and public security, matters sub judice,

personal privacy and personal data, commercial and industrial confidentiality, and in general any material required by law to be held in confidence. When availability of data or information for use or exploitation is denied to the private sector, an explanation of the reason for non-availability should be given.

2. Member States should compile and publicize guidelines defining the conditions of release, use and exploitation of public sector data and information.

National or regional guidelines of greater specificity, developed by consultation with the appropriate bodies, are required to take account of the different conditions prevailing in the individual Member States.

3. Basic data and information collected by the public sector should be regularly reviewed, with regard to the possibility of their further use, and exploitation.

If consideration is being given to the harmonization of public sector data and handling procedures in the interests of greater efficiency, regard should also be paid to the possibilities for easier use and exploitation of the information by the private sector. If circumstances permit, it may be advantageous to involve the private sector in the review process.

4. The availability of basic data and information should be publicized to the private sector, and the procedures by which it can be obtained and used or exploited should be made clear. Negotiation procedures and pricing principles should as far as practicable, having regard to the characteristics of the data or information, be harmonized across public administrations.

The establishment of an advisory body, able to coordinate and share among administrative bodies experience of negotiations with the private sector of the information industry, and the development of model contracts, are measures likely to promote uniformity of procedures.

Pricing policies may vary depending on the nature of the information. A price should be established which reflects the costs of preparing and passing it to the private sector, but which does not necessarily include the full cost of collecting and handling it in the course of routine administration. The price may be reduced if provision of the resulting information service is deemed to be necessary in the public interest. Public sector accounting procedures should not impede receipt of payment for information or services sold.

5. When public sector information or data is released for exploitation by the private sector, restrictions should not normally be placed on the types of customer or the territories to which the resulting service may be made available.

The general principle is that no unnecessary barriers to the flow of information across borders should be imposed.

6. Contracts or other arrangements with private sector database providers or host services should not grant exclusive rights if they lead to distortion of competition. If, for reasons such as the penetration of a new market or provision of a service in the public interest, an exclusive right is deemed necessary, it should be subject to regular review.

THE PUBLIC SECTOR AS A PROVIDER OF ELECTRONIC INFORMATION SERVICES

7. The public sector should adopt policies and procedures which encourage investment by the private sector in the development of information services based on public data.

The database industry is characterized by low levels of investment and risk aversion among the traditional publishing or manufacturing groups which have entered the market. Use of public sector data and information presents an opportunity to encourage

the private sector in the provision of electronic information services.

8. When a public administration provides electronic information services directly, it should avoid any practice which leads to the distortion of competition. Before establishing a new electronic service or continuing an existing one, public administrations should consider whether an existing private sector service can be used or adapted to meet their requirements.

Reasons for which the public sector might develop and support electronic information services could include, amongst others, the following examples:

- (i) where the service is deemed to be essential to the public interest, but the private sector is unwilling or unable to offer it on reasonable terms,.*
- (ii) where it is an inseparable part of public sector tasks;*
- (iii) where a visibly neutral service, independent of the private information industry, is required.*

9. Electronic information services directly supplied by the public sector should be regularly reviewed, with a view to deciding whether their provision by the public or private sector is most appropriate, or whether the involvement of the private sector in their production or distribution, or their replacement by appropriate commercial services is desirable.

The public sector could, for example, develop databases and then consider offering them to the private sector, or could offer the distribution rights of public sector databases to the private sector. In order that the taxpayer may share in the rewards of success when databases which have reached commercial viability are transferred, a royalty payment in addition to the negotiated price may be considered appropriate.

10. Electronic information service entrepreneurs in European Community countries should be treated on an equal footing irrespective of their country of origin within the European Community.

The offer of, for example, rights of exploitation of public sector data or information should be made on an equal footing to all EC hosts, no special advantage being given to national hosts.

PUBLIC SECTOR SUPPORT OF INFORMATION SERVICES

While as yet no common procedures for public support have been established, in this relatively new sector certain ground rules ought to be observed.

11. Support from the public sector may only be given in accordance with the European Community rules on competition, as expressed in Articles 92 and 93 of the Treaty, on aids granted by States.
12. Subject to the provisions of Guideline 11 above, direct or indirect financial support from the public sector may be provided to encourage pre-competitive research and development, and to encourage the emergence of new market sectors.
Public support can be given provided that reasonable and non-discriminatory procedures are set up to transfer the R&D results to interested organizations within the Community who wish to exploit them commercially. Public support should cover only part of the investment costs during development and start-up phases, and not ongoing operating costs of services, and such support, limited in time, should not generate unfair competition for existing services.
13. Public assistance may also be provided to develop and maintain information services which cannot become viable on a commercial basis but which are necessary in the public interest. Public assistance may also involve reducing linguistic barriers to the use of existing databases of European origin, by making them accessible in other languages.
14. As part of the process of stimulating the development of the information market, consideration should be given to the establishment of joint ventures between -the public and private sectors.

Support can also be given by the public sector to the establishment of new electronic information services in the marketplace, by acting as a 'launch customer' and guaranteeing the purchase of an agreed amount of appropriate service provision.

15. Conditions governing application of public support to users of European electronic information services should not discriminate against these services on the basis of their European Community country of origin.
16. Public sector accounting and budgetary procedures and exchange controls should not prevent access by interested public departments to electronic information services throughout the Community.

LEGAL AND STATUTORY RESPONSIBILITIES

17. The public sector should strive to eliminate unjustified legal or other obstacles to the use of public information by the private sector and its exploitation by the information industry, while ensuring that commercial and other confidentiality considerations and civil and criminal liability are respected (see Guideline 1).

Public administrations should, for example, be clear in the applications of rules for classification of information.

- 18 The public sector should, to the highest extent possible, make use of the discretion given under Article 2 (4) of the Berne Convention to exempt from copyright texts of a legislative, administrative or legal nature and official translations of such texts. In the case of texts falling under the copyright convention, the public sector ought not to award exclusive right of reproduction to a single organization as this might hinder value enhancement by other users.

Article 2 (4), as revised at the Stockholm Copyright Convention, 1967, states that 'It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature,

and to official translations of such texts'. The aim is to adopt the most favourable interpretation of the Convention in order to encourage the private sector to create advanced information services.

19. When public sector information or data is made available for private sector use or exploitation, any pre-existing citizens' rights of access to the original information as determined by legislation must be preserved.

The individual should continue to be able to have access to such information on the same terms as obtained before its release to the private sector.

European Communities - Commission

Guidelines for improving the synergy between the public and private sectors in the information market

Luxembourg: Office for Official Publications of the European Communities

1989 - 13 pp. - 14.8 x 21 cm

ES, DA, DE, GR, EN, FR, IT, NL, PT

ISBN 92-825-9237-5

Catalogue number: CD-54-88-126-EN-C

Venta y suscripciones · Salg og abonnement · Verkauf und Abonnement · Πωλήσεις και συνδρομές
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